## THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

## CRIMINAL REVISION CASE Nos.1868/2011, 1580 & 1699 of 2012

### COMMON ORDER:

These three criminal revision cases are filed questioning the correctness of the orders impugned passed in discharge petitions filed by A1(Ch.Laxminarayana), A5(K.Ashok Kumar) & A7(C.C.Mukundan Nambiar) in C.C.No.23/2005 on the file of the III Additional Special Judge for CBI Cases, Hyderabad.

2. Crl.R.C.No.1868/2011 is filed questioning the correctness of the order dated 16.03.2011 in Crl.M.P.No.1834/2007 in CC No.23/2005 on the file of the III Additional Special Judge for CBI Cases, Hyderabad, by and under which, the Court below dismissed the petition filed by the petitioner/A1-Ch.Laxminarayuana under section 239 Cr.P.C seeking to discharge him from the charges levelled against him.

3. Crl.R.C.No.1580/2012 is filed questioning the correctness of the order dated 27.08.2012 in Crl.M.P.No.34/2012 in CC No.23/2005 on the file of the III Additional Special Judge for CBI Cases, Hyderabad, by and under which, the Court below dismissed the petition filed by the petitioner/A5-K.Ashok Kumar under section 239 Cr.P.C seeking to discharge him from the charges levelled against him.

4. Crl.R.C.No.1699/2012 is filed questioning the correctness of the order dated 27.08.2012 in Crl.M.P.No.1833/2007 in CC No.23/2005 on the file of the III Additional Special Judge for CBI Cases, Hyderabad, by and under which, the Court below dismissed the petition filed by the petitioner/A7-C.C.Mukundan Nambiar under section 239 Cr.P.C seeking to discharge him from the charges levelled against him.

5. Heard the learned counsel appearing for the petitioners/A1, A5 & A7 and the learned Special Public Prosecutor, representing the CBI/State.

6. The case of the prosecution is that A1, during his tenure as Chief Manager, SBI, Padmaraongar Branch, Hyderabad, criminally conspired with other accused i.e. A2 to A7, with dishonest and fraudulent intention to cheat the Bank by abusing his official position as public servant and sanctioned Bank Guarantees in favour of A2 to A6, without verifying the genuineness and correctness of their respective Firms, without conducting the pre-sanction inspection of properties, without verifying the genuineness of the sale deeds of properties and encumbrance certificates and without verifying the end use of funds and disbursed the amounts and as a result, the Bank sustained loss of Rs.70.50 lakhs since the amounts were not recovered from A2 to A6. Therefore a case in RC No.11(A)/2003-CBI, HYD was registered against all the accused for the offences under Sections 120-B, 420, 468 and 471 r/w.462 IPC and under Section 13(2) r/w.13(1)(b) of Prevention of Corruption Act, 1988.

7. In so far as the petitioner/A1-Ch.Laxminarayana is concerned, it is alleged that, he being the Chief Manager of State Bank of India, Padmarao Nagar Branch, Hyderabad, conspired with A2 to A7 to cheat the Bank by abusing his official capacity, and in that process, basing on fake and forged documents furnished by A2 to A6, he issued the following Bank Guarantees in favour of National Small Scale Industries Corporation (NSIC) on behalf of A2 to A6 for availing raw material assistance by A2 to A6 from NSIC.

| Bank Guarantee No. | Date | Amount Rs. (in lakhs) | Beneficiary |
|---|---|---|---|
| 19/96-97 | 23.12.1997 | 12 lakhs | M/s.S.V.Enterprises (A2 concerned) |

| | | | |
|---|---|---|---|
| 21/97-98 | 14.02.1998 | 12 lakhs | M/s.S.V.Enterprises (A2 concerned) |
| 22/97-98 | 20.03.1998 | 8 lakhs | M/s.S.V.Enterprises (A2 concerned) |
| 23/97-98 | 26.03.1998 | 20 lakhs | M/s.Suryodaya Hightech Engineers Pvt.Ltd. (A5 concerned) |
| 25/98-99 | 12.05.1998 | 15 lakhs | M/s.DMK Excavations and Constructions Pvt.Ltd. (A3 concerned) |
| 28/98-99 | 13.06.1998 | 20 lakhs | M/s.Timber Matix (A6 concerned) |
| 29/98-99 | 13.07.1998 | 7 lakhs | M/s.S.N.Reddy Enterprises (A4 concerned) |

Basing on the above mentioned Bank Guarantees A2 to A6 availed the financial assistance from NSIC by placing false and fake invoices and withdrew the amounts and failed to repay the said amounts to NSIC, thereby, NSIC invoked the Bank Guarantees and hence the Bank sustained loss of Rs.70.50 lakhs.

8. In so far as the petitioner/A5 is concerned, it is alleged that by producing false and fake documents he availed Bank Guarantee No.23/97-98 dated 26.03.1998 for Rs.20 lakhs and failed to repay the same, thereby cheated the Bank and misappropriated the amounts.

9. In so far as the petitioner/A7 is concerned, it is alleged that he is instrumental in cheating the Bank by providing assistance to the private parties i.e., A2 to A6 in getting Bank Guarantees sanctioned on the basis of fake and forged securities by influencing A1 and for which he received Rs.44,000/- as commission by way of two cheques from A3.

10. The petitioners/A1, A5 & A7 filed petitions under Section 239 Cr.P.C seeking discharge from the offences alleged against them. The learned trial Court having considered the submissions advanced on either side, dismissed their petitions, observing that there are specific allegations and there is *prima facie* case to frame charges against the petitioners/A1, A5 & A7.

11. It is the contention of the petitioner/A1 that A1 issued Bank Guarantees as per norms and with permission from the concerned officers and he had been falsely implicated by leaving the concerned officers responsible for sanctioning the same, and that the allegations made against him are baseless.

12. It is the contention of the petitioner/A5 that he had not committed any offence alleged and more over, with the consent of CBI, the matter is compromised and he cleared off the loan and the SBI withdrawn the case before Debt Recovery Tribunal, Hyderbad and there is no loss sustained by the Bank as he discharged the entire loan amount, and therefore, he is entitled for discharge.

13. It is the contention of the petitioner/A7 that he never conspired with other accused and he has nothing to do with sanctioning of Bank Guarantees by A1 and he rendered services in filling forms for which he received remuneration by way of two cheques and he is in no way connected to the crime.

14. The learned Special Public Prosecutor, representing CBI, submits that there is *prima facie* case against the petitioners/A1, A5 & A7 to proceed. He further submits that the investigating agency examined as many as 73 witnesses and placed on record voluminous documentary evidence, which clearly disclose the key roles played by the petitioners/A1, A5 & A7 in the alleged conspiracy and misappropriation of amounts.

15. The point for consideration is as to whether the petitioners/A1, A5 & A7 are entitled to be discharged under Section 239 Cr.P.C.

16. Both parties, to substantiate their respective contentions, relied upon the Authorities of the Apex Court. The learned Special Public Prosecutor relied upon the following decisions in support of his contentions;

17. In ***State of Bihar v. Dhirendra Prasad Shrivastava and ors.***[1] the Hon'ble Supreme court at paras-5 and 9 held as under:

> "5. It is in the light of the aforesaid facts revealed by the investigation carried out in respect of the offences alleged that the liability of the accused Respondents to face a full-scale trial was required to be determined by the High Court. The contours of the powers of the High Court to make such determination, at the stage when it was called upon to do so, is well known and would not require a reiteration. Such power Under Section 482 of the Code of the High Court is severely circumscribed. The result and the findings of investigation will have to be accepted as correct in their entirety and it is against such a backdrop that the necessity of a regular trial against the accused Respondents will have to be determined. The truth or veracity of the allegations cannot be agitated or gone into at that stage. If, judged by the aforesaid standard the culpability of the accused is, prima facie, made out, the High Court will have no jurisdiction to interdict the proceedings.
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> 9. The third principal ground on which the High Court thought it proper to grant relief to the Respondents accused is that in a departmental proceeding instituted against the Respondents on the same charges, the Respondents were exonerated. Relying on a decision of this Court in P.S. Rajya v. State of Bihar: 1996 (3) R.C.R. (Criminal) 261 : (1996) 9 SCC 1, the High Court construed the ratio of the aforesaid decision to mean that in a situation where a departmental proceeding against an accused is launched and the

accused is exonerated therein, the criminal proceeding on the same charges must necessarily fail and, therefore, should be interdicted. While relying on P.S. Rajya's case supra, the High court failed to notice a subsequent decision of this Court in State v. M. Krishna Mohan: 2007 (4) R.C.R. (Criminal) 882 : 2007 (6) Recent Apex Judgments (R.A.J.) 96 : (2007) 14 SCC 667, where this Court had taken the view that exoneration in a departmental proceeding, ipso facto, would not lead to the acquittal of the accused in the criminal trial. Even otherwise, in a three judge Bench decision of this Court in State (NCT of Delhi) v. Ajay Kumar Tyagi: 2012 (4) R.C.R. (Criminal) 297 : 2012 (4) Recent Apex Judgments (R.A.J.) 415 : (2012) 9 SCC 685, it has been explained that the decision in P.S. Rajya (supra) must be understood to have been rendered in the facts of the case. The above position is clear from a reading of the report in P.S. Rajya (supra) itself. Furthermore in State (NCT of Delhi) v. Ajay Kumar Tyagi (supra), the position has been explained in the following manner:

> "24. Therefore, in our opinion, the High court quashed the prosecution on total misreading of the judgment in the case of P.S. Rajya (Supra). In fact, there are precedents, to which we have referred to above, that speak eloquently a contrary view i.e. exoneration in departmental proceeding ipso facto would not lead to exoneration or acquittal in a criminal case. On principle also, this view commends us. It is well settled that the standard of proof in department proceeding is lower than that of criminal prosecution. It is equally well settled that the departmental proceeding or for that matter criminal cases have to be decided only on the basis of evidence adduced therein. Truthfulness of the evidence in the criminal case can be judged only after the evidence is adduced therein and the criminal case can not be rejected on the basis of the evidence in the

departmental proceeding or the report of the Inquiry Officer based on those evidence.

25. We are, therefore, of the opinion that the exoneration in the departmental proceeding ipso facto would not result in the quashing of the criminal prosecution. We hasten to add, however, that if the prosecution against an accused is solely based on a finding in a proceeding and that finding is set aside by the superior authority in the hierarchy, the very foundation goes and the prosecution may be quashed. But that principle will not apply in the case of the departmental proceeding as the criminal trial and the departmental proceeding are held by two different entities. Further they are not in the same hierarchy."

18. In ***State of Maharashtra v. Vikram Anantrai Doshi***[2], the Hon'ble Supreme Court at paras 8, 9, 20 and 21 made the following observations:

"8. During the pendency of the case before the trial court on 30th March 2009 the informant, Bank of Baroda, had transferred its debts to a trust IARC - BOB-01-07 under the control of Kotak Mahindra Bank. The accused, Vikram Doshi, settled the disputes and paid Rs. 42 lacs for settling the dispute. On that basis, Kotak Mahindra Bank issued a "no due certificate" to M/s. Atcom Technology Limited stating that on receipt of Rs. 42 lacs, there was no amount outstanding and payable by them in respect of facility advanced by Bank of Baroda. The said bank also confirmed that the guarantees issued by Vikram Doshi stood discharged.

9. After the receipt of such "No dues certificate" the Respondent preferred a petition Under Section 482 of the Code of Criminal Procedure bearing Criminal Application No. 2239 of 2009 before the High Court of Judicature at Bombay and

the learned Single Judge vide order dated 24.2.2010 quashed the criminal proceedings pending before the learned Addl. Metropolitan Magistrate. The learned Single Judge referred to one of its earlier orders and came to hold as follows:

Both the offices Under Sections 406 and 420 are compoundable with the permission of the court. As already discussed hereinabove, the Bank has already given its No Due Certificate to the borrower i.e. ATCOM. It can clearly be seen that even if the matter is permitted to go for trial, no fruitful purpose would be served, except burdening the criminal Courts which are already overburdened.

20. The present obtaining factual score has to be appreciated on the anvil of aforesaid authorities. On a studied scrutiny of the principles stated in ***Gain Singh***(supra) it is limpid that the three-Judge Bench has ruled that proceeding in respect of heinous and serious offences and the offences under prevention of corruption Act and all other offences committed by public servants while working in that capacity are not to be quashed. That apart, the court has also emphasized on offences having a serious impact on society. It has been further laid down that criminal cases having overwhelmingly and predominantingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature. In ***Narendra Lal Jain*** (supra) the three-Judge Bench quashed the proceeding as the charges were famed Under Section 120/420 Indian Penal Code in respect of the private Respondents. In ***Gopakumar B. Nair's*** case the court distinguished the decision in ***Narendra Lal Jain*** (supra) and opined that the

accused had also been charged for the commission of offence Under Section 471 of Indian Penal Code and on that basis declined to interfere with the order passed by the High Court which had refused to quash the criminal proceeding.

21. In the case at hand, as per the chargesheet the Respondents had got LCs issued from the bank in favour of fictitious companies propped up by them and the fictitious beneficiary companies had got letters of credits discounted by attaching their bogus bills. The names of 10 fictitious companies have been mentioned in the chargesheet. Thus, allegation of forgery is very much there. As is manifest from the impugned order, the learned Single Judge has not adverted to the same. It is not a simple case where an accused has borrowed money from the bank and diverted it somewhere else and, thereafter, paid the amount. It does not fresco a situation where there is dealing between a private financial institution and an accused, and after initiation of the criminal proceedings he pays the sum and gets the controversy settled. The expose' of facts tells a different story. As submitted by the learned Counsel for CBI the manner in which the letters of credits were issued and the funds were siphoned has a foundation in criminal law. Learned Counsel would submit that it does not depict a case which has overwhelmingly and predominantingly civil flavour. The intrinsic character is different. Emphasis is laid on the creation of fictitious companies."

19. In ***CBI v. Narendra Lal Jain[3],*** 3-Judges Bench of the Hon'ble Supreme Court at paras 13 and 14 held as under:

"13. In the present case, as already seen, the offence with which the accused-Respondents had been charged are under Section 120B/420 of the Indian Penal Code. The civil liability of the Respondents to pay the amount to the bank has already been settled amicably. The terms of such settlement have been extracted above. No subsisting grievance of the bank in this regard has been brought to the notice of the Court. While the offence under Section 420 Indian Penal Code is compoundable the offence under Section 120B is not. To the latter offence the ratio laid down in ***B.S. Joshi*** (supra) and ***Nikhil Merchant*** (supra) would apply if the facts of the given case would so justify. The observation in ***Gian Singh*** (supra) (para 61) will not be attracted in the present case in view of the offences alleged i.e. under Sections 420/120B Indian Penal Code.

14. In the present case, having regard to the fact that the liability to make good the monetary loss suffered by the bank had been mutually settled between the parties and the accused had accepted the liability in this regard, the High Court had thought it fit to invoke its power under Section 482 Code of Criminal Procedure. We do not see how such exercise of power can be faulted or held to be erroneous. Section 482 of the Code inheres in the High Court the power to make such order as may be considered necessary to, inter alia, prevent the abuse of the process of law or to serve the ends of justice. While it will be wholly unnecessary to revert or refer to the settled position in law with regard to the contours of the power available under Section 482 Code of Criminal Procedure. It must be remembered that continuance of a criminal proceeding which is likely to become oppressive or may partake the character of a lame prosecution would be good ground to invoke the extraordinary power under Section 482 Code of Criminal Procedure."

20. In ***Gopakumar B.Nair v. CBI***[4]***,*** 3-Judges Bench of the Hon'ble Supreme Court at paras-13 and 14 held as under:

"13. The decision in ***Gian Singh*** v. ***State of Punjab*** {(2012) 10 SCC 303} holding the decision rendered in ***Nikhil Merchant v. CBI*** {(2008) 9 SCC

677} and other cases to be correct is only an approval of the principle of law enunciated in the said decisions i.e. that a non-compoundable offence can also be quashed Under Section 482 Code of Criminal Procedure on the ground of a settlement between the offender and the victim. It is not an affirmation, for there can be none, that the facts in ***Nikhil Merchant*** (supra) justified/called for the due application of the aforesaid principle of law. Also, neither ***Nikhil Merchant*** (supra) nor ***Gian Singh*** (supra) can be understood to mean that in a case where charges are framed for commission of non-compoundable offences or for criminal conspiracy to commit offences under the PC Act, if the disputes between the parties are settled by payment of the amounts due, the criminal proceedings should invariably be quashed. What really follows from the decision in ***Gian Singh*** (supra) is that though quashing a non-compoundable offence Under Section 482 Code of Criminal Procedure, following a settlement between the parties, would not amount to circumvention of the provisions of Section 320 of the Code the exercise of the power Under Section 482 will always depend on the facts of each case. Furthermore, in the exercise of such power, the note of caution sounded in ***Gian Singh*** (supra) (para 61) must be kept in mind. This, in our view, is the correct ratio of the decision in ***Gian Singh*** (supra).

14. The aforesaid principle of law may now be applied to the facts of the present case. At the very outset a detailed narration of the charges against the accused-Appellant has been made. The Appellant has been charged with the offence of criminal conspiracy to commit the offence Under Section 13(1)(d). He is also substantively charged Under Section 420 (compoundable with the leave of the Court) and Section 471 (non-compoundable). A careful consideration of the facts of the case would indicate that unlike in ***Nikhil***

***Merchant*** (supra) no conclusion can be reached that the substratum of the charges against the accused-Appellant in the present case is one of cheating nor are the facts similar to those in ***CBI v. Narendra Lal Jain*** {(2014) 5 SCC 364} where the accused was charged Under Section 120B read with Section 420 Indian Penal Code only. The offences are certainly more serious; they are not private in nature. The charge of conspiracy is to commit offences under the Prevention of Corruption Act. The accused has also been charged for commission of the substantive offence Under Section 471 Indian Penal Code. Though the amounts due have been paid the same is under a private settlement between the parties unlike in ***Nikhil Merchant*** (supra) and ***Narendra Lal Jain*** (supra) where the compromise was a part of the decree of the Court. There is no acknowledgement on the part of the bank of the exoneration of the criminal liability of the accused-Appellant unlike the terms of compromise decree in the aforesaid two cases. In the totality of the facts stated above, if the High Court has taken the view that the exclusion spelt out in ***Gian Singh*** (supra) (para 61) applies to the present case and on that basis had come to the conclusion that the power Under Section 482 Code of Criminal Procedure should not be exercised to quash the criminal case against the accused, we cannot find any justification to interfere with the said decision."

21. In ***CBI v Jagjit Singh***[5] the Hon'ble Supreme Court made the following observations at paras-13, 14, 15 and 16:

"13. The very same issue fell for consideration recently before a three-Judge Bench of this Court in ***Gian Singh v. State of Punjab and Anr.***: 2012 (10) SCC 303. In the said case, this Court discussed the relative scope of inherent power of the High Court under Section 482 Code of Criminal Procedure to quash criminal proceedings involving non-compoundable offences in view of compromise arrived at between the parties. That was a case wherein when the special leave petition came up for hearing, a two-Judge Bench vide order reported in ***Gian Singh v. State of Punjab and Anr.***: (2010) 15 SCC 118 doubted the correctness of the decisions of this Court in ***B.S. Joshi and Ors. v. State of Haryana and Anr.***: (2003) 4 SCC 675,***Nikhil Merchant v. Central Bureau of Investigation and Anr.***: 2008 (9) SCC 677 and ***Manoj Sharma v. State and Ors***: (2008) 16 SCC 1 and referred the matter to a larger Bench. Hence, the question before the Bench was with regard to the inherent power of the High Court under Section 482 Code of Criminal Procedure in quashing the criminal proceedings against an offender who has settled his dispute with the victim of the crime but the crime in which he was allegedly involved was not compoundable under Section 320 Code of Criminal Procedure. Discussing different provisions and taking into consideration the different decisions of this Court, the larger Bench in ***Gian Singh (supra)*** held as follows:

> **61.** The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz.: (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on

the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary

> to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.

14. In the present case, the specific allegation made against the Respondent-accused is that he obtained the loan on the basis of forged document with the aid of officers of the Bank. On investigation, having found the ingredients of cheating and dishonestly inducing delivery of property of the bank (Section 420 Indian Penal Code) and dishonestly using as genuine a forged document (Section 471 Indian Penal Code), charge sheet was submitted under Sections 420 /471 Indian Penal Code against the accused persons.

15. The debt which was due to the Bank was recovered by the Bank pursuant to an order passed by Debts Recovery Tribunal. Therefore, it cannot be said that there is a compromise between the offender and the victim. The offences when committed in relation with Banking activities including offences under Sections 420/471 Indian Penal Code have harmful effect on the public and threaten the well being of the society. These offences fall under the category of offences involving moral turpitude committed by public servants while working in that capacity. Prima facie, one may state that the bank as the victim in such cases but, in fact, the society in general, including customers of the Bank is the sufferer. In the present case, there was neither an allegation regarding any abuse of process of any Court nor anything on record to suggest that the offenders were entitled to secure the order in the ends of justice.

In the instant case, the High Court has not considered the above factors while passing the impugned order. Hence, we are of the opinion that the High Court erred in addressing the issue in right perspective.

16. In such circumstances, we set aside the impugned judgment and order dated 31st March, 2010 passed by the High Court in CRR No. 719 of 2010 and direct the trial court to proceed the matter in accordance with law and to conclude the trial expeditiously. The appeal is allowed with the aforesaid observation."

22. The learned counsel appearing for the petitioners in all three revision cases relied upon the following decisions;

In ***J.Sri Ram Surya Prakash Sharma v. State of Andhra Pradesh***[6]***,*** a learned Single Judge of this Court at paras-8, 11 and 12 held as under:

"8. Therefore, it is now fairly well settled that, while deciding a petition under Section 482 Code of Criminal Procedure, this Court should not act as a trial Court and appraise the evidence to be adduced by the parties to find out if ultimately the accused would be convicted or acquitted, and that this Court has to go by the allegations in the complaint/charge sheet only and only if the allegations in the complaint/charge sheet, if taken to be true, do not constitute an offence, the charge sheet can be quashed.

11. In his statement under Section 164 Code of Criminal Procedure, the Chief Manager (Vigilance Department) of the Bank stated that as per their investigation they have noticed some procedural lapses on the part of their staff. At the time of above loan, A-5 being the then Assistant General Manager has released the ad hoc limit without obtaining additional security, A-6 the then Chief

Manager has not properly verified the title deeds and did not identify the guarantors which resulted impersonation, and A-7 being the then Chief Manager debited the loan amount without debiting the amount towards margin/commission for opening letter of credits though the account is irregular.

12. Having regard to the facts and circumstances of the case, the observations made in the decisions cited supra and the statements of the second Respondent and the Chief Manager (Vigilance Department) recorded under Section 164 Code of Criminal Procedure, I find force in the contention of the learned Senior Counsel appearing for the Petitioners that the allegations made against the Petitioners in the complaint as well as the charge sheet are only procedural lapses in discharging their official functions and so initiation of criminal proceedings against them in the absence of any accusation or allegation of abetment on their part in commission of offence is an abuse of process of law and that the averments made against the Petitioners either in the report or in the charge sheet, prima facie, do not constitute any offence much less the charges framed against them for the offences and if the proceedings against them are allowed to continue, it is nothing but harassment and even abuse of process of law, and so the same are liable to be quashed. The case on hand clearly falls under the guideline Nos. 1, 3 and 5 extracted supra laid down by the Supreme Court in Bhajanlal's case (3 supra). I am also in agreement with the contention of the learned Senior Counsel, relying upon the observations made in C. Chenga Reddy's case (1 supra), that violation of any circulars and instructions and commission of administrative irregularities cannot be said to have been done by the official concerned with any corrupt or dishonest intention and such irregularities or administrative lapses could only have resulted in a departmental action against the officials but criminal prosecution

is not justified."

23. Learned counsel for the petitioners placed reliance on the unreported decisions of this court in Crl.P.No.1510 of 2009, dated 16.10.2012, Crl.RC.No.1307 of 2011, dated 09.04.2013 and Crl.RC.No.805 of 2013, dated 29.09.2015, which judgments are based on the decisions of the Hon'ble Supreme Court, referred to above and hence need not require detail reference thereto.

Crl.RC.No.1868 of 2011

24. This is a petition filed by A.1 in C.C.No.23 of 2005. As noticed above, he along with others has been charge-sheeted by the CBI alleging offences punishable under Sections 120-B, 420, 468, 471 read with 462 I.P.C., and under Sections 13(2) read with 13(1)(b) of the Prevention of Corruption Act, 1988.

25. The petitioner/A.1 was working as Chief Manager of State Bank of India, Padmarao Nagar Branch, Hyderabad. He is alleged to have conspired with other accused and by abusing his official position, issued seven bank guarantees in favour of National Small Scale Industries Corporation (NSIC) basing upon the fake and forged documents furnished by the other accused. On the basis of such bank guarantees, A.2 to A.6 availed financial assistance from NSIC by placing false and fake invoices and have withdrew the amounts but failed to repay the said amounts to NSIC, due to which NSIC had invoked the bank guarantees and hence the bank is said to have sustained a loss of Rs.70.50 lacs.

26. The petitioner/A1 and others filed petition under Section 239 Cr.P.C., for discharging them. The learned III-Additional Special Judge for CBI Cases, Hyderabad, dismissed the same holding that *prima facie* there is material to proceed against the accused.

27. The contention of the petitioner/A.1 is that the bank

guarantees were sanctioned for 25% cash margin and 75% collateral security after obtaining legal opinion and report of the approved valuer. The petitioner/A1 followed all the legal formalities and the Controller/Zonal Office was aware of the issuance of the bank guarantees. No objection was raised by the audit party during the periodical audit about the issuance of the bank guarantees. It is not the petitioner/A1 who has disbursed the amount covered by the bank guarantees in favour of NSIC. It is not the duty of the petitioner/A1 being the Chief Manager to conduct any pre-sanction inspection of properties and verify the genuineness of the documents produced by the parties. It is further contended that the entire material placed on record refer only to procedural lapses in discharging the official duty and there is no allegation of abetment or the petitioner/A1 has any part in commission of the offences and hence he is entitled to be discharged.

28. It is also the contention of the petitioner/A.1 that by the time the amount was disbursed, it is L.W.5 – Y.Krishna Rao who was incharge and it is the said Krishna Rao who himself stated in his statement that he detected the fraud played by the borrowers. In spite of having detected the fraud, it is the said Krishna Rao – L.W.5 who disbursed the bank guarantees instead of withholding the same. In some of the bank guarantees, the first witness of the investigating agency by name B.V.R.Chowdary, the Chief Manager(LW 4) is a co-signatory and it is the petitioner/A.1 alone who has been charge-sheeted by taking the other persons as witnesses. In other words, the contention of the petitioner/A.1 is that the listed witnesses No.1 and 5 are as much responsible as the petitioner/A.1 for the alleged irregularities or lapses, if any, on their part in issuing the bank guarantees based on the alleged fake and forged title deeds produced by the borrowers. It is also the contention of the petitioner/A.1 that the CBI also failed to take into account the fact that one of the borrowers

viz., A5 has already paid the amount due to the bank and therefore the case filed by the bank against the said borrower in Debt Recovery Tribunal, Hyderabad, has been withdrawn. It is also the contention that out of the total bank guarantees worth about Rs.94 lacs, a sum of Rs.25 lacs was recovered towards margin money, Rs.3 lacs towards bank commission. It is further stated that for the sum of Rs.15,87 lacs, Rs.7.45 lacs and Rs.23.31 lacs, the bank has filed O.A.No.283 of 2001 before the Debt Recovery Tribunal, Hyderabad, O.S.No.139 of 2001 on the file of the I-Additional Senior Civil Judge, Ranga Reddy District, and O.S.No.838 of 2002 on the file of the District Judge, Ranga Reddy District, respectively, and obtained the decrees. With regard to another amount of Rs.18 lacs, A.4 has repaid the same vide O.A.No.348 of 2001 before the Debt Recovery Tribunal, Hyderabad. Insofar as the amount of Rs.15 lacs is concerned, a criminal case was filed against the petitioner/A.1 and others being C.C.No.1722 of 2003 in the Court of the X-Additional Chief Metropolitan Magistrate, Secunderabad, but the same has been withdrawn. Briefly stated, the contention of the petitioner/A.1 is that out of a total bank guarantee of about Rs.94 lacs, the bank has already realized or is in a position to realize, in pursuance to the decrees, a sum of about Rs.1.07 crores which makes about 13.64 lacs surplus. Therefore, there is no question of the bank sustaining any financial loss as alleged by the CBI.

29. The other contention of the petitioner is that for the acts alleged against him, departmental enquiry was initiated against him and he has been punished departmentally by the orders of the Disciplinary Authority dated 09-02-2001 by imposing the punishment of reduction in Time Scale by two stages for a period of two years with cumulative effect with a further direction that he will not earn any increments during the period of such reduction and it will have the effect of postponing his future increments. The disciplinary authority further directed that the petitioner/A.1 be re-instated by treating the

period spent by him under suspension as on duty. It is submitted in the detailed departmental enquiry what has been held to be proved is that the petitioner/A.1 being Chief Manager has committed lapses of a serious nature but there is no evidence of their being any *mala fides* on the part of A.1 even though it is proved that he failed to exercise due care and diligence and exhibited negligence in discharging his duties which resulted in substantial loss to the bank.

30. The petitioner/A.1 further submits that the investigation carried out and charge-sheet has filed is not by a competent Officer as per the provisions of the Delhi Special Police Establishment Act, the Officer who filed the charge-sheet was on deputation from Railway Protection Force to the CBI.

31. Learned Counsel appearing for the petitioner/A.1 further submits that the petitioner/A.1 having born on 11-05-1948 and joined the bank as a Clerk on 28-10-1967 and while holding the post of Chief Manager at Padmarao Nagar Branch, he has been suspended on 02-11-1998. Departmental Enquiry was ordered on 10-11-1999. Charge-sheet is filed in the year 2005. The petitioner is now aged about 68 years and has retired from service long back.

32. Learned Special Public Prosecutor appearing for CBI submits that at the stage of considering the material on record under Section 239 Cr.P.C., the contentions that are now urged by the petitioner cannot be gone into and conducting a mini trial at the threshold without giving an opportunity to the prosecution to produce the evidence on record is not what is contemplated by the procedure. What is all that is required to be seen at this stage is as to whether there is material sufficient on record to proceed with the trial of the case and the culpability or otherwise of the petitioner in the charge of criminal conspiracy with other accused cannot be adjudicated unless the evidence is placed on record. Learned Special Judge has considered the entire matter in proper perspective and being satisfied

that there is sufficient material to proceed against the accused has dismissed the petition and such an order which is based on material on record cannot be said to be illegal or irregular warranting interference by the Court in its revisional jurisdiction.

33. The prosecution is intending to prove its case against the petitioner/accused and as many as 73 witnesses are listed as proposed to be examined and about 353 documents are sought to be relied upon. At the stage of framing of the charge, the entire evidence that is likely to be produced cannot be judged and its truthfulness or otherwise cannot be gone into at the initial stage of framing of the charge. After a full-fledged trial, it will come out as to whether there was any criminal conspiracy on the part of the petitioner/A.1 being the Chief Manager at the time in sanctioning bank guarantees based on sureties that were furnished by the borrowers, which are alleged to be fake and forged. The question as to whether it is the petitioner/A.1 being the Chief Manager is in any way responsible with the said act or borrowers in defrauding the bank by producing the fake and forged documents or whether other Officers of the bank such as the Controllers, the approved valuer, the legal opinion and the person who disbursed the bank guarantees are equally responsible with the petitioner/A.1 is a larger question which cannot be adjudicated at this stage. *Prima facie* the material on record shows that the petitioner being the Chief Manager of the bank has in contravention of the rules of the bank has issued Bank Guarantees worth nearly about Rs.94 lacs by taking a margin money of 25% and for the remaining 75% has obtained collateral security from the borrowers who have furnished the title deeds of the properties which are alleged to be fake and forged.

34. The contention that Investigating Officer being not competent, he being on deputation from Railway Police Force, also cannot be adjudicated at this stage. When the evidence of the said Investigating Officer comes on record, it has to be decided as to

whether he is the person competent to file charge-sheet or not. The scope of enquiry at this stage is limited to see as to whether the material on record is sufficient to proceed with the trial or whether the allegations *per se* do not constitute any offence.

35. Admittedly, even according to the petitioner/A.1, even a departmental enquiry that was conducted after following the proper procedure and recording the evidence, the authorities found serious lapses on the part of the petitioner/A.1 in sanctioning the bank guarantees and thereby imposed the punishment. Merely because minor punishments have been imposed by the disciplinary authority in the departmental proceedings, the petitioner/A.1 cannot be heard saying that the evidence that is proposed to be produced in a criminal trial cannot be sufficient for convicting him of the criminal offence.

Crl.RC No.1699 of 2012:

36. The petitioner herein is A7 who is a retired Assistant General Manager who retired from the State Bank of India in the year 1988. He is said to be acting as Consultant to the prospective applicants as a professional expert. He is only claiming charges for rendering professional service but he has nothing to do with the transactions as such.

37. In the instant case, as noticed above, the allegation is that A1 being Chief Manager of the Bank has conspired with A2 to A7 in issuing Bank Guarantees by obtaining collateral security of 75% of Bank Guarantee on the basis of sureties furnished by the borrowers which has ultimately proved to be fake and forged. The borrowers have offered fake and forged documents by way of security and it is the Chief Manager and other Officers of the Bank who have accepted the same and issued the Bank Guarantees which ultimately the Bank had to honour resulting in loss to the Bank.

38. The petitioner/A7 do not deny that he has guided the persons to obtain Bank Guarantees and other loans by filling up of

necessary forms and also advising them to present all the necessary documents for obtaining the loans. Whether the petitioner/A7 was aware about the nature of the documents that have been furnished by the persons seeking loans from the Bank was known to him or not is the matter to be determined only after a trial. Admittedly, he has helped the borrowers in doing the paper work, including furnishing the requisite documents and therefore, his culpability or otherwise in the overall conspiracy involving A1 to A7 is a question which has to be adjudicated.

39. A perusal of the contents of the FIR and the charge sheet *prima facie* show that he has conspired with other accused with a dishonest and fraudulent intention to cheat Bank by making the other accused to offer fake sale deeds as security in obtaining Bank Guarantees and he also received amounts by way of cheques and therefore, he was instrumental in the fraud. At this stage, on the basis of the material available on record, it cannot be said that the charge against the petitioner/A7 is groundless, so as to discharge him. The Court below has properly appreciated the material on record and dismissed his petition to discharge under section 239 Cr.P.C.

40. Learned counsel for the petitioner/A7, however, submits that the petitioner/A7 retired from the Bank service in the year 1988 as Assistant General Manager and he is presently aged nearly 85 years and to prosecute him at this age, nearly 25 years after his retirement, may not be justified in the interests of justice.

<u>Crl.RC.No.1580 of 2012:</u>

41. The petitioner herein is A5 in the charge sheet. He is concerned with the Bank Guarantee for about Rs.20 lakhs issued in favour of M/s.Suryodaya Hightech Engineers Private Limited. The petitioner/A5 while procuring the Bank Guarantee has deposited an amount of Rs.5 lakhs as margin money, apart from providing counter

guarantee indemnifying to the Bank to the extent of Rs.20 lakhs in his personal capacity.

42. The case of the prosecution is that the documents that were produced by the petitioner and others by way of security for Bank Guarantees obtained are fake and forged and thereby he obtained Bank Guarantees by criminally conspiring with the Manager of the Bank and other accused. The contents of the FIR and the charge sheet shows that he criminally conspired with A1 with the dishonest and fraudulent intention to cheat the Bank by offering fake sale deed as security and obtained Bank Guarantee. The petitioner is accused of the offences punishable under section 120-B r/w.Sections 420, 468 and 471 IPC.

43. The contention of the petitioner/A5 is that even before the case was registered, he was negotiating with the Bank to pay the amounts and as a matter of fact settled the amount and paid the amount outstanding and as a matter of fact the Bank which has filed case before the Debt Recovery Tribunal has withdrawn the case and therefore, he cannot be further prosecuted.

44. The material that was produced on behalf of the petitioner/A5 no doubt shows that there was settlement in between the petitioner/A5 and the Bank and during the pendencey of the proceedings before the Debt Recovery Tribunal and after obtaining permission from CBI, the Bank has accepted the amount and withdrawn the case filed against the petitioner/A5 in so far as the loan is concerned. The permission that is given by CBI to accept the outstanding amount was subject to the condition that this will not absolve the criminal liability of the petitioner/A5 and will not in any way affect the criminal prosecution. In its letter dated 25.10.2004 addressed to the Bank, the Superintendent of Police, CBI, SPE, Hyderabad informed that it is at liberty to discharge the liability of M/s.Suryodaya Hightech Engineers Private Limited, but, however, the

criminal case registered by CBI will follow its normal course. After obtaining such letter from the CBI, the Bank has accepted the amount and withdrawn the case filed against the petitioner for the amount due.

45. The learned counsel for the petitioner/A5 submits that since the amount that was due and payable to the Bank has been fully discharged, he is entitled to be discharged and to continue the criminal prosecution against him will be oppressive.

46. On the other hand, the learned Special Public Prosecutor for CBI by relying upon the Authorities, referred to above, submit that merely because the petitioner/A5 has entered into a compromise with the Bank as one time settlement and paid the amount that does not discharge the criminal liability of the petitioner/accused. The learned Special Public Prosecutor submits that the facts of each case have to be considered separately as has been consistently laid down by the several Authorities.

47. In the instant case, the specific allegation is that in the process of obtaining the Bank Guarantee or loan, the petitioner has submitted certain title documents which are found to be fake and forged. According to the prosecution, the petitioner/A5 is part of large and deep-seated conspiracy and he along with active connivance of the Bank Officials have obtained the Bank Guarantees by submitting the fake documents and thereby the Bank was cheated. Considering the nature of the allegations made against the petitioner, merely because he paid the amounts to the Bank and discharged the liability cannot be taken as valid ground for discharging the petitioner/accused at the threshold.

48. What is required to be seen is as to whether the petitioner/accused has any dishonest or fraudulent intention in obtaining the financial assistance from the Bank and in that process submitted certain documents which have ultimately turned out to be fake and forged. In this back ground, merely because the borrower

has settled the disputes with the Bank and paid the money cannot be taken as a valid ground for quashing all further proceedings in so far as the petitioner/A5 is concerned. May be Bank which is more interested in realizing the debt has done so, but that cannot exculpate the liability of the petitioner/A5 to answer to the charge that he had committed an act which is punishable under criminal jurisprudence.

49. At this stage, it is not possible to hold that the petitioner/A5 has never intended to cause any loss to the Bank or had any intention of defrauding for obtaining any pecuniary gain from the Bank. It is a matter of evidence and *prima facie* the material available on record is sufficient for proceeding further with the trial in the case. The learned Special Judge has properly appreciated the issue and dismissed the petition to discharge the petitioner/A5.

50. As has been observed from the authorities cited above, the Court at the stage of framing charges cannot decide about the truthfulness or otherwise of the evidence proposed to be produced, its validity or legality of the evidence, documentary or oral, proposed to be produced during the course of trial. A mini trial at this stage is not what is contemplated. A *prima facie* satisfaction of the Court, based on the material on record, is what is all that is required and unless it is shown that the charges alleged are groundless, the accused cannot be discharged. Voluminous oral and documentary evidence has been gathered by the investigating agency and on its basis, it cannot be said that there is absolutely no material, whatsoever, for proceeding against the petitioners in all these three revision cases.

51. For the foregoing observations and in view of the specific allegations, I have no hesitation to hold that the petitioners in these three revision cases, viz., A1, A5 & A7 are not entitled to be discharged under section 239 Cr.P.C.

52. These three Criminal Revision Cases are accordingly dismissed.

However, taking into consideration the fact that the petitioners/A1(Ch.Laxminarayana), A5(K.Ashok Kumar) & A7(C.C.Mukundan Nambiar) retired as Senior Officers of the Bank and are now aged about 68 years to 85 years respectively, the trial Court is directed to dispose of the case as expeditiously as possible, uninfluenced by any of the observations made herein, without, however, insisting for the presence of the petitioners/A1(Ch.Laxminarayana), A5(K.Ashok Kumar) & A7(C.C.Mukundan Nambiar) on each and every date of hearing unless their presence is required for any specific purpose.

Pending miscellaneous applications, if any, shall stand closed in consequence.

**M.S.K.JAISWAL,J**

Date: 30.12.2015
Dsr/Smr

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[1] LAWS(SC)-2014-12-91

[2] 2015(1) ALT (Crl.) 319 (SC)

[3] (2014) 5 SCC 364

[4] (2014) 5 SCC 800

[5] (2013) 10 SCC 686

[6] 2011(1) ALD (Crl.) 207 (AP)